

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 ISO-00 TRSE-00 EB-11 SS-20 NSC-07 SP-03

COME-00 CIAE-00 DODE-00 INR-11 NSAE-00 PA-04 RSC-01

USIA-15 PRS-01 OMB-01 /103 R

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R 041733Z SEP 74

FM SECSTATE WASHDC

TO AMEMBASSY ROME

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E.O. 11652: N/A

TAGS: EFIN, IT

SUBJECT: US-ITALIAN INCOME TAX CONVENTION

REF: ROME 11091

1. EMBASSY AUTHORIZED TO TRANSMIT TO FONOFF THE
FOLLOWING NOTE ALONG WITH THE PROPOSED JOINT PRESS
RELEASE AND PROPOSED ITALIAN NOTE:

(BEGIN TEXT DRAFT NOTE VERBALE TO ITALY)

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS
COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS AND HAS THE
HONOR TO REFER TO THE MINISTRY'S NOTE VERBALE NUMBER
079/15620 OF AUGUST 8 RESPONDING TO THE EMBASSY'S NOTE
VERBALE NO. 403 OF JULY 24, 1974 CONCERNING THE APPLICATION
OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND
THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME, SIGNED AT WASHINGTON ON MARCH 30, 1955.

(2ND PARA) IN RESPONSE TO THE FIRST POINT IN THE
MINISTRY'S NOTE, THE GOVERNMENT OF THE UNITED STATES WISHES
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TO EXPRESS ITS CONFIDENCE THAT WITH FORMALIZATION OF THE

PROPOSALS CONTAINED IN THE MINISTRY'S NOTE VERBALE AND THE INITIATION OF DISCUSSIONS ON SU0STANTIVE MODIFICATION OF THE TAX CONVENTION, IT WILL CONSIDER IT APPROPRIATE TO WITHDRAW THE NOTIFICATION OF INTENTION TO TERMINATE THE INCOME TAX CONVENTION CONTAINED IN THE EMBASSY'S NOTE VERBALE NO. 318 DATED JUNE 29, 1974. HOWEVER, THE

EMBASSY'S NOTE NO. 403 WAS NOT INTENDED AS, AND DID NOT CONSTITUTE, A WITHDRAWAL OF THE NOTICE TO TERMINATE.

(3RD PARA) THE UNITED STATES GOVERNMENT SHARES THE VIEW OF THE ITALIAN GOVERNMENT THAT FIRST, THERE SHOULD BE AN EXCHANGE OF NOTES FORMALIZING THE CLARIFICATION OF THE APPLICATION OF THE CONVENTION. ACCORDINGLY, THE UNITED STATES GOVERNMENT WOULD WELCOME AT THE EARLIEST POSSIBLE MOMENT A NOTE FROM THE GOVERNMENT OF ITALY INCORPORATING ITS PROPOSAL TO APPLY THE CONVENTION TO THE "INCOME TAX ON PHYSICAL PERSONS" AND THE "INCOME TAX ON JURIDICIAL PERSONS."

(4TH PARA) SECOND, THE GOVERNMENT OF T;E UNITED STATES AGREES THAT A COMMUNIQUE OR PRESS RELEASE BE ISSUED JOINTLY BY THE ITALIAN GOVERNMENT AND T;E UNITED STATES GOVERNMENT INCORPORATING TE SUBSTANCE OF THE AFOREMENTIONED NOTE TO BE EXCHANGED; AND EXPLAINING THE MANNER IN WHIC THE ITALIAN TAXES ON DIVIDENDS AND ROYALTIES WILL BE COLLECTED, AS PROPOSED IN THE EMBASSY'S NOTE OF THE UNITED STATES GOVERNMENT OF JULY 24. A PROPOSED PRESS RELEASE IS ATTACHED.

(5TH PARA) THIRD, ARRANGEMENTS SHOULD BE MADE TO INITIATE DISCUSSIONS BEFORE THE END OF THE YEAR TO REVISE SUCH PROVISIONS OF THE CONVENTION (AS CLARIFIED BY THE NOTE REFERRED TO ABOVE) AS MAY BE APPROPRIATE.

(END TEXT DRAFT NOTE VERBALE TO ITALY)

(BEGIN TEXT PROPOSED JOINT PRESS RELEASE OF THE ITALIAN GOVERNMENT AND THE UNITED STATES GOVERNMENT)

THE ITALIAN GOVERNMENT AND THE GOVERNMENT OF THE UNITED STATES HAVE TODAY ANNOUNCED AGREEMENT TO THE EFFECT THAT THE INCOME TAX CONVENTION BETWEEN THE TWO GOVERNMENTS SHALL APPLY TO THE ITALIAN INCOME TAXES ON PHYSICAL PERSONS AND ON JURIDICIAL PERSONS AS OF JANUARY 1, 1974, THE DATE WHEN THE TWO NEW TAXES CAME INTO EFFECT. AN UNCLASSIFIED

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EXCHANGE OF NOTES WAS ENTERED INTO WHICH ASSURES THE CONTINUED APPLICATION OF THE CONVENTION WITHOUT INTERRUPTION. THE ANNOUNCEMENT WAS MADE SIMULTANEOUSLY IN ROME AND WASHINGTON.

(2ND PARA) ACCORDINGLY, THE ITALIAN WITHHOLDING TAX ON DIVIDEND PAYMENTS FROM AN ITALIAN CORPORATION TO A UNITED STATES RESIDENT OR TO A U.S. CORPORATION NOT HAVING A PERMANENT ESTABLISHMENT IN ITALY WILL BE LIMITED

TO 15 PERCENT (OR TO 5 PERCENT IN THE CASE WHERE THE UNITED STATES CORPORATION OWNS 95 PERCENT OF THE VOTING POWER OF THE ITALIAN CORPORATION PAYING THE DIVIDEND AND MEETS SUCH OTHER QUALIFICATIONS AS THE CONVENTION PROVIDES). IN THE CASE OF ROYALTIES PAID BY AN ITALIAN LICENSEE TO U.S. RESIDENTS OR CORPORATIONS NOT HAVING A PERMANENT ESTABLISHMENT IN ITALY, THERE WILL BE NO WITHHOLDING TAX AT THE SOURCE.

(3RD PARA) IN THE CASE OF DIVIDENDS AND ROYALTIES PAID FROM U.S. SOURCES TO ITALIAN RESIDENTS OR CORPORATIONS, THE SAME LIMITATIONS ON U.S. WITHHOLDING TAXES WILL APPLY.

(4TH PARA) BOTH COUNTRIES HAVE ALSO EXPRESSED THEIR INTENTION TO BEGIN NEGOTIATIONS ON POSSIBLE MODIFICATIONS OF THE INCOME TAX CONVENTION IN LIGHT OF THE EXPERIENCE GAINED SINCE IT WAS FIRST SIGNED IN 1955 AND OF THE DEVELOPMENTS IN THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) OF WHICH BOTH COUNTRIES ARE MEMBERS.

(5TH PARA) THE PROSPECTIVE NEGOTIATIONS WILL ALSO SEEK TO RESOLVE THE QUESTION OF WHETHER THE CONVENTION SHALL APPLY TO THE ITALIAN INCOME TAX INTENDED TO FINANCE LOCAL GOVERNMENT, COMMONLY REFERRED TO AS ILOR (L'IMPOSTA LOCALE SUI REDDITI). PENDING RESOLUTION OF THIS QUESTION, ANY TAX LIABILITY OF U.S. RESIDENTS OR CORPORATIONS RECEIVING INCOME SUBJECT TO ILOR WILL BE DONE AND PAYABLE BY THEIR REMITTING THE AMOUNT OF SUCH LIABILITY WITH THE APPROPRIATE RETURN AT THE PROPER FILING TIME, NORMALLY AT THE END OF THE TAXABLE YEAR. (END TEXT PROPOSED JOINT PRESS RELEASE)

2. SINCE IT IS APPROPRIATE FOR THE ITALIAN GOVERNMENT TO INITIATE THE EXCHANGE OF NOTES ON REVISIONS OF THE UNCLASSIFIED

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CONVENTION, THERE FOLLOWS A DRAFT NOTE FORMULATED IN THAT MANNER. EMBASSY MAY OFFER IT TO GOI AS A SAMPLE ACCEPTABLE TO THE USG. (BEGIN TEXT PROPOSED NOTE FROM THE ITALIAN GOVERNMENT TO THE UNITED STATES GOVERNMENT) DEAR MR. AMBASSADOR:

I HAVE THE HONOR TO REFER TO THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON MARCH 30, 1955.

(2ND PARA) AS THE EMBASSY IS AWARE, THE ITALIAN GOVERNMENT MADE FUNDAMENTAL CHANGES IN ITS TAX STRUCTURE WITH EFFECT FROM JANUARY 1, 1974. AS A RESULT OF THESE CHANGES IN ITALIAN LAW DOUBT HAS ARISEN AS TO THE CONVENTION'S APPLICATION TO THESE NEW TAXES.

(3RD PARA) IN ORDER TO CONTINUE THE MUTUALLY ADVANTAGEOUS RELATIONSHIPS WHICH HAVE DEVELOPED BETWEEN OUR TWO COUNTRIES UNDER THE CONVENTION, THE ITALIAN GOVERNMENT PROPOSES TO APPLY THE CONVENTION TO THE NEW TAXES ON INCOME, EFFECTIVE AS OF JANUARY 1, 1974, SO THAT THE CONVENTION WILL HAVE CONTINUOUS APPLICATION BOTH TO THE OLD TAXES AND TO THE NEW TAXES.

(4TH PARA) ACCORDINGLY, THE ITALIAN GOVERNMENT WILL, FROM AND AS OF JANUARY 1, 1974, APPLY THE PROVISIONS OF THE CONVENTION TO (1) "THE INCOME TAX ON PHYSICAL PERSONS" (L'IMPOSTA SUL REDDITO DELLE PERSONE FISICHE) AND (2) "THE INCOME TAX ON JURIDICIAL PERSONS" (L'IMPOSTA SUL REDDITO DELLE PERSONE GIURIDICHE).

(5TH PARA) I HAVE THE HONOR TO PROPOSE THAT THE PRESENT NOTE AND YOUR REPLY THERETO WILL CONSTITUTE THE CONFIRMATION OF OUR TWO GOVERNMENTS OF THIS APPLICATION OF THE CONVENTION. (END TEXT PROPOSED NOTE FROM ITALIAN GOVERNMENT)

3. IF EMBASSY BELIEVES THE FOLLOWING PARAGRAPH WOULD BE ACCEPTED BY GOI, YOU MAY IN YOUR DISCRETION INCLUDE IT IN THE DRAFT NOTE: (BEGIN TEXT PARAGRAPH)
PENDING RESOLUTION OF THE QUESTION WHETHER THE CONVENTION IS TO APPLY TO THE INCOME TAX TO FINANCE LOCAL GOVERNMENT (ILOR), THE ITALIAN GOVERNMENT AGREES THAT ANY TAX
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LIABILITY OF U.S. RESIDENTS OR CORPORATIONS RECEIVING INCOME SUBJECT TO ILOR WILL BE DUE AND PAYABLE BY THEIR REMITTING THE AMOUNT OF SUCH LIABILITY WITH THE APPROPRIATE RETURN AT THE PROPER FILING TIME. (END TEXT PARAGRAPH)

4. NOTE FOR TEMPLEMAN: IT IS IMPORTANT THAT YOU ATTEMPT IN YOUR DISCUSSIONS WITH GOI TO INSURE THAT ANY PROPOSED ITALIAN NOTE RECOGNIZES THAT THE USG IS NOT SEEKING AN "AMENDMENT" OF THE CONVENTION BUT RATHER IS SEEKING A "CLARIFICATION" BY GOI OF THE APPLICATION OF THE CONVENTION TO EXISTING ITALIAN TAXES. IN ANY EVENT, ANY NOTE ON THIS MATTER PROPOSED BY OR RECEIVED FROM THE GOI MUST BE REFERRED BACK TO WASHINGTON FOR CLEARANCE AT A HIGH LEVEL PRIOR TO AGREEMENT. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, TEXT, DOUBLE TAXATION, DIPLOMATIC NOTES, TAX REFORMS
Control Number: n/a
Copy: SINGLE
Draft Date: 04 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE193533
Document Source: CORE
Document Unique ID: 00
Drafter: L/T:WMCQUADE:RVW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740245-0841
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740975/aaaacInk.tel
Line Count: 216
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: ROME 11091
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags:
Review Date: 12 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 JUL 2002 by maustmc>; APPROVED <28 JAN 2003 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: US-ITALIAN INCOME TAX CONVENTION
TAGS: EFIN, IT, US
To: ROME
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005